Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

AARON REID,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0605-CR-280
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0601-FA-23

May 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Aaron Reid ("Reid") appeals his maximum executed sentence of fifty years for Conspiracy to Commit Murder, a Class A felony. Specifically, he contends there is neither sufficient evidence to establish that he had entered into an agreement to have Jodi Reid ("Wife") and Robin Conerly ("Mother-in-law") murdered, nor sufficient evidence to show that he engaged in an overt act in furtherance of an agreement. Reid also argues that his sentence is inappropriate. Concluding that there is substantial evidence to support his conviction and that Reid's sentence is not inappropriate, we affirm.

Facts and Procedural History

In April 2005, Reid married Wife. This marriage produced one child, a daughter. On October 25, 2005, Reid pled guilty to two misdemeanors, Criminal Trespass and Resisting Law Enforcement, and was sentenced to one year in jail, to be suspended to probation. While on probation, Reid was arrested for and charged with four additional misdemeanors: (1) Criminal Mischief; (2) Invasion of Privacy; (3) Battery Against Person Causing Bodily Injury; and (4) Criminal Recklessness. Reid pled guilty to Criminal Mischief and Invasion of Privacy and was incarcerated. While in jail and awaiting trial for the Battery Against Person Causing Bodily Injury and Criminal Recklessness charges, Reid plotted with fellow inmate Jerry Johnson ("Johnson") to devise a scheme to kill Wife and Mother-in-law. Reid explained to Johnson that he wanted Wife killed because she had been dating another man and had given Reid a venereal disease. Reid further explained that he wanted Mother-in-law killed because he had a bad relationship with her. After several discussions, Johnson told Reid that he

knew someone, Jay Thompson ("Thompson"), who would kill both Wife and Mother-in-law for him.

Unbeknownst to Reid, Johnson contacted David Callahan ("Detective Callahan"), a detective with the Madison County Sheriff's Department, and informed him of Reid's intentions. Thereafter, Johnson pretended to make telephone calls to Thompson while Reid was present, stating where Wife lived, when she would be home, and the manner in which Reid wanted her to die. Reid then sent a letter to Thompson stating, "I want this package done by Sonday [sic], Monday the latest. Then I want You to come up and Bond me the f—k out . . . ." State's Ex. 1.

Detective Callahan intercepted Reid's letter. Thereafter, Detective Callahan—posing as Thompson—conversed by telephone with Reid. Reid was reluctant to discuss the details of his plan to kill Wife and Mother-in-law because he knew jail calls were recorded. Nevertheless, after being asked by Detective Callahan if he wanted Wife killed, Reid responded by saying "I want everything taken care of." Tr. p. 257. Detective Callahan then advised Reid that this was a serious matter and was not the equivalent of "breaking into somebody's house." *Id*. at 260. Reid responded that once he was released from prison, "I'm going to help you, man. I'm going to work for you, man. I want to work. You know what I'm saying? Everything's going to be paid back." *Id*. at 262. Detective Callahan reiterated, "When we hang up the phone, it's done." *Id*. at 267. Reid responded, "There's only two (2) people, the mother and a daughter and that's it." *Id*. Before ending the telephone conversation, Detective Callahan asked Reid if he wanted to change his mind. Reid responded, "Nope." *Id*. at 277.

Detective Callahan then contacted Hamilton County Sheriff's Detective Mike Howell ("Detective Howell") and asked Detective Howell to go undercover as his associate and meet with Reid at the jail. Howell and Reid spoke through a telephone in a visitation area where they were separated by a glass partition. During their conversation Howell asked Reid if he wanted them "D-E-A-D." *Id*. at 284-85. In response, Reid made a slashing motion across his throat.

The State charged Reid with Conspiracy to Commit Murder, a Class A felony.[1] Reid was subsequently tried and convicted as charged. At his sentencing hearing, both Wife and Mother-in-law acknowledged awareness of Reid's various mental disorders and urged the trial court to be lenient in its sentencing of Reid. In its sentencing order, the trial court identified Reid's criminal history and the fact he was on probation at the time of the offense as aggravating circumstances. The court found Wife and Mother-in-law's statements and the fact Reid was on medication and needs counseling as mitigating circumstances. Finding that the aggravating circumstances outweighed the mitigators, the court sentenced Reid to the maximum executed sentence of fifty years in the Indiana Department of Correction. Reid now appeals.

Discussion and Decision

On appeal, Reid contends there is not sufficient evidence to support his conviction for conspiracy to commit murder. Reid also argues that his sentence is inappropriate.

[1] Ind. Code § 35-41-5-2.

I. Sufficiency of the Evidence

Reid first contends that there is not sufficient evidence to establish that Reid had entered into an agreement with Johnson to kill Wife and Mother-in-law, nor is there sufficient evidence to show that he engaged in an overt act in furtherance of an agreement. When reviewing a challenge to the sufficiency of evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.* We will uphold the conviction if there is substantial evidence of probative value to support it. *Id*.

To prove that Reid conspired to commit murder, Indiana Code § 35-41-5-2 requires the State prove that: (1) with intent to commit murder, (2) Reid entered into an agreement with another person to commit murder, and (3) that either Reid or the person with whom Reid agreed performed an overt act in furtherance of the agreement. *See Dickenson v. State*, 835 N.E.2d 542, 552 (Ind. Ct. App. 2005). The nature of the evidence required to prove a conspiracy agreement has been summarized as follows:

> A conspiracy entails an intelligent and deliberate agreement between the parties. But the state is not required to prove the existence of a formal express agreement. It is sufficient if the minds of the parties meet understandingly to bring about an intelligent and deliberate agreement to commit the offense . . . . This may be inferred from the acts committed and the circumstances surrounding the defendant's involvement. Understandably then, a conviction for conspiracy may, and often will, rest solely on circumstantial evidence.

Minniefield v. State, 512 N.E.2d 1103, 1105 (Ind. 1987) (quoting *Sutton v. State*, 495 N.E.2d 253, 257 (Ind. Ct. App. 1986)) (internal citations and quotations omitted).

Reid first contends that there is not sufficient evidence to establish that he had entered into an agreement with Johnson. We cannot agree. There is substantial evidence from which the jury could have found that Reid entered into an agreement with Johnson to commit murder. First, Reid requested Johnson's assistance in killing Wife and Mother-in-law. Second, Johnson informed Reid that he could arrange to have the crimes completed. Third, after this arrangement had been established, Reid sat by as Johnson pretended to make phone calls to Thompson stating where Wife lived, when she would be home, and the manner in which Reid wanted her to die. Thus, it was reasonable for the jury to conclude that Reid and Johnson reached an agreement to have Wife and Mother-in-law killed. The fact that Johnson and Thompson had no intention to commit murder is not relevant. As the State points out in its brief, the Supreme Court has held that Indiana's criminal code "embodies a unilateral theory of conspiracy such that proof that the co-conspirator intended to carry out the conspiracy is not required." *Tidwell v. State*, 644 N.E.2d 557, 559 (Ind. 1994). Therefore, "the crime of conspiracy to commit murder may be committed by a single conspirator who, acting through a police informant, employs an undercover law enforcement officer to commit murder." *Minniefield*, 512 N.E.2d at 1106.

Reid also argues that there is not sufficient evidence that he committed an overt act in furtherance of an agreement because the letter he sent to Thompson and the conversations that he had with Detective Callahan and Detective Howell occurred before he had completely entered into an agreement to commit murder. However, we have already held that Reid and Johnson had entered into an agreement before Reid sent the

letter to Thompson. Therefore, this letter was sent after Reid and Johnson reached an agreement to commit murder. The letter contained a picture of Wife and provided Wife's name, address, phone number, and a description of the vehicles likely parked at her residence. In this letter Reid wrote, "I want this package done by Sonday (sic) [or] Monday [at] the latest. Then I want You to come up and Bond me the f—k out . . . ." State's Ex. 1. Because this letter was written and mailed to Thompson after Reid and Johnson reached an agreement, it constitutes an overt act in furtherance of the agreement. Thus, there is sufficient evidence to support his conviction for conspiracy to commit murder.

II. Sentencing

Reid also contends that his sentence is inappropriate. In 2005, the Indiana General Assembly amended Indiana Code § 35-38-1-7.1(d) (2006), which now provides that a trial court may impose any sentence that is authorized by statute and permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Under this new sentencing scheme, a defendant may no longer bring a claim regarding aggravators and mitigators that is separate and independent from a claim that her sentence is inappropriate under Indiana Appellate Rule 7(B). *See McMahon*, 856 N.E.2d at 748-49. Rather, we review sentences under a single standard: inappropriateness. *Id*. at 752. The burden is on the defendant to persuade the appellate court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). In assessing the appropriateness of sentences under Indiana Appellate Rule 7(B), we will review the aggravating and mitigating

circumstances identified, or not identified, by the trial court. *McMahon*, 856 N.E.2d at 748; *Gibson v. State*, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). In doing so, we apply an abuse of discretion standard. *Long v. State*, --- N.E.2d ---, 2007 WL 1310444 at *4 (Ind. Ct. App. May 7, 2007).

Here, Reid was convicted of Conspiracy to Commit Murder, a Class A felony. Indiana Code § 35-50-2-4 provides, in pertinent part: "A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years." The trial court sentenced Reid to the maximum executed sentence of fifty years.

Reid argues that the trial court abused its discretion in failing to assign greater mitigating weight to his history of mental illness.[2] We cannot agree. First, no medical evidence was submitted at trial to support Reid's testimony regarding his history of mental illness. Second, Reid did not establish any nexus between his mental health and the crime in question. Therefore, the trial court did not abuse its discretion in failing to give more consideration to Reid's history of mental illness. *See Corralez v. State*, 815 N.E.2d 1023, 1026 (Ind. Ct. App. 2004) (stating "in order for a mental history to provide a basis for establishing a mitigating factor, there must be a nexus between the defendant's mental health and the crime in question.").

Having found that the trial court did not abuse its discretion in its consideration of the mitigating circumstances, we now turn to our ultimate task, which is to determine

[2] Reid also suggests that the trial court abused its discretion in not considering his age and the fact that he has a wife and an infant daughter as mitigating circumstances. Because Reid has failed to set forth any cogent argument explaining why those facts were mitigating circumstances, he has waived this claim. *See* Ind. Appellate Rule 46(A)(8)(a).

whether Reid's sentence is inappropriate in light of the nature of his offense and his character. *McMahon*, 856 N.E.2d at 748; *Gibson*, 856 N.E.2d at 147; *see also* Ind. Appellate Rule 7(B). Regarding the nature of this offense, Reid's crime is particularly heinous because he conspired to kill both Wife and Mother-in-law and had his plan been carried through, his daughter, before reaching the age of two, would be without a mother and grandmother. As to Reid's character, the record shows his criminal history to be significant. Beginning at age thirteen, Reid was adjudicated a juvenile delinquent for committing a burglary and placed at the Delaware Youth Opportunity Center. In 2000, Reid was again adjudicated as a juvenile delinquent. In 2001, Reid was convicted of armed robbery and sentenced to ten years in the Indiana Department of Correction. In 2005, Reid was convicted of Criminal Trespass and Resisting Law Enforcement. In 2006, Reid was convicted of Criminal Mischief and Invasion of Privacy. Additionally, at the time of this offense Reid was on probation and awaiting trial for two unrelated misdemeanors. Given the nature of his offense and his character, Reid's maximum executed sentence of fifty years is not inappropriate.

Affirmed.

BARNES, J., concurs.

BAILEY, J., concurs in result.